

In re Patent Application of:
LAWTON ET AL.
Serial No. **10/669,097**
Filed: **SEPTEMBER 23, 2003**

REMARKS

Applicants respectfully submit this Pre-Appeal Brief Request for Review in response to the Final Office Action dated April 27, 2007. Claims 1-10 are currently pending. Claims 1-10 all stand rejected. Claim 1 is the only independent claim.

The Examiner rejected claim 1 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,987,770 to Yonge, III ("Yonge"). An anticipation rejection under § 102 is improper unless a single prior art reference shows or discloses each and every claim recitation, as arranged in the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990); *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); see generally, MPEP 2131.

Applicants' claim 1 recites a method for determining MAC address for a remote device having a known, unique DEK in a network where devices may not send a confirmation to a *SetNEK* request, the method comprising the steps of preparing a broadcast message with a *SetNEK* request containing a unique, temporary *NEK*, encrypting the message with the DEK of the remote device, transmitting the broadcast message on a network medium, confirming receipt of the temporary *NEK* by sending a request that requires a response from the remote device which is encrypted with the temporary *NEK*, and determining the MAC address of the remote device from the response.

Yonge clearly does not show or disclose each and every recitation of Applicants' claim 1. For instance, Yonge does not show or disclose preparing a broadcast message with a *SetNEK* request containing a unique, temporary *NEK*. Instead, Yonge expressly discloses that "...Set Network Encryption Key MAC management entries..." are encrypted "...using the received default key." (Yonge, col. 33, lines 45-50.) The

default key is *not* a unique, temporary *NEK*, as that recitation is properly understood in view of Applicants' express qualification in the specification. (See, e.g., Specification, paragraph [0026], step 1 – "It is *required* that the value of the *NEK* for the temporary Logical Network does not equal the recommended default *NEK*..."; emphasis added.) Thus, the claim recitation of a "unique, temporary *NEK*" cannot be construed, consistently with the Specification, to include a default *NEK*.

Additionally, Yonge does not show or disclose the step of "determining the MAC address of the remote device from *the response*." The recitation of "the response" antecedently refers to the earlier claim recitation, "confirming receipt of the temporary *NEK* by sending a request that requires a *response* from the remote device which is encrypted with the temporary *NEK*...." Thus, it is *not* sufficient that Yonge merely shows or discloses that a MAC address can be determined from *any* response. Instead, the legal standard for anticipation requires that Yonge must show or disclose that a MAC address of a remote device is determined from the response to a request that is encrypted with the unique, temporary *NEK*, as is recited by Applicants' claim 1.

Therefore, even if the default *NEK* were improperly considered a unique, temporary *NEK*, Yonge would still not show or disclose each and every claim 1 recitation – at least because Yonge does not show or disclose that a MAC address of a remote device is determined from the response to a request encrypted with the default *NEK*.

In view of the foregoing, the Examiner's § 102 anticipation rejection of Applicants' claim 1 is clearly improper and should be withdrawn upon consideration by the Pre-Appeal Brief Conference, at least because the Examiner relies on an expressly improper construction of "unique, temporary *NEK*" (see, e.g., Final Office Action, p. 4). Also, the Examiner improperly considers claim recitations in isolation, rather than as

In re Patent Application of:
LAWTON ET AL.
Serial No. 10/669,097
Filed: **SEPTEMBER 23, 2003**

they are arranged in the claim. For instance, the disclosure cited as showing determination of a MAC address (such as the citations to col. 26, lines 44-61, col. 1, lines 40-45, col. 10, lines 4-9, and col. 33, lines 59-61 – see, e.g., Final Office Action, p. 4) does not even ostensibly relate to determining a MAC address in response to a request encrypted with a unique, temporary NEK – which is what Applicants' claim 1 recites.

Thus, Yonge clearly does not show or disclose each and every recitation of Applicants' claim 1, as those recitations are arranged in the claim. Accordingly, Applicants respectfully submit that the rejection of claim 1 under 35 U.S.C. § 102(e) as anticipated by Yonge is clearly improper for at least this reason, and should be withdrawn.

Claims 2-10 were also rejected under 35 U.S.C. § 102(e) as anticipated by Yonge. Claims 2-10 all depend, directly or indirectly, from claim 1 and include additional recitations thereto. Accordingly, Applicants respectfully submit that the rejection of claims 2-10 under 35 U.S.C. § 102(e) as anticipated by Yonge is improper for at least the reasons stated in connection with claim 1, and should be withdrawn.

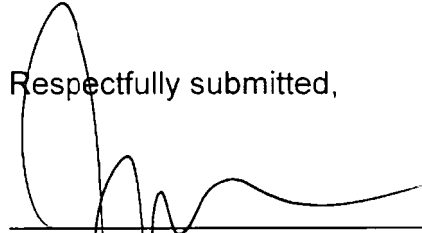
Having established the clear errors in the current rejection of claims 1-10, Applicants respectfully request that the rejection of claims 1-10 be withdrawn, and claims 1-10 be allowed.

Payment of the 37 C.F.R. § 41.20(b)(1) fee for a Notice of Appeal is submitted herewith. Applicants believe no additional fees are due in connection with this Pre-

In re Patent Application of:
LAWTON ET AL.
Serial No. 10/669,097
Filed: **SEPTEMBER 23, 2003**

Appeal Brief Request for Review. If any additional fees are deemed necessary,
authorization is granted to charge any such fees to Deposit Account No. 08-0870.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin R. Sauer", is written over a horizontal line.

JUSTIN R. SAUER
Reg. No. 56,920
Allen, Dyer, Doppelt, Milbrath
& Gilchrist, P.A.
255 S. Orange Avenue, Suite 1401
Orlando, Florida 32802
407-841-2330
Agent for Applicants